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No. 364

In the Supreme Court of the United States

OCTOBER TERM, 1961

LESTER RAMSEY and CHARLESETTA JACKSON,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Vol I, 61-65, Pet. App. 13-18) is reported at 291 F. 2d 737.[1]

[1] The record consists of two separately paginated volumes. Volume I contains appendices of the proceedings in the district court and the proceedings in the court of appeals, and will be referred to by volume number. Volume II is the reporter's transcript of the trial and will be referred to as "Tr".

JURISDICTION

The judgment of the court of appeals was entered on June 30, 1961 (Vol. I, 60, 61). The time for filing a petition for a writ of certiorari was extended to August 29, 1961, and the petition was filed on August 28, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the conviction of petitioner Ramsey.
2. Whether the trial court properly instructed the jury on the elements of the offenses.

STATEMENT

The petitioners were convicted in the District Court for the Eastern District of Michigan on charges of selling heroin not pursuant to an order form, in violation of 26 U.S.C. 4705 (a) (count 4), and of receiving and concealing unlawfully imported heroin in violation of 21 U.S.C. 174, (count 5).[2] Petitioner Ramsey was sentenced to consecutive terms of imprisonment of five years on each of counts four and five (Vol. I, 46). Petitioner Jackson was sentenced to concurrent terms of five years on each of these counts. On appeal, the convictions were affirmed.

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[2] The indictment contained seven counts, which charged a conspiracy and substantive offenses. At the close of the government's case, the court dismissed the conspiracy count (count 1) (Tr. 217). The petitioners were found guilty on counts 4 and 5, and not guilty on counts 2, 3, 6 and 7 (Vol. I, 42-43).

The pertinent facts may be summarized as follows:

1. On December 19, 1958, one Leo Lewis, who was an informer for the Bureau of Narcotics, telephoned petitioner Ramsey in Detroit and asked him whether he had any "stuff" (narcotics) (Tr. 30-32, 86-87, 132-134). When Ramsey replied in the affirmative, Lewis ordered "half a piece" and requested Ramsey to bring it to him (Tr. 86-88, 133-134). Ramsey replied that he would not "put any in his car", and that Lewis should "do like [they had] been doing; come by" (Tr. 88, 133-134). Lewis went to the apartment and purchased narcotics on that day (Tr. 93, 98, 134-137).

On February 12, 1959, Lewis telephoned Ramsey's apartment and spoke to petitioner Charlesetta Jackson. Lewis ordered a "piece", and Miss Jackson told him to "come on out and pick up the package" (Tr. 40). Shortly thereafter, Lewis and a narcotics agent drove up to the rear of Ramsey's apartment, and Lewis rapped on the window. Lewis then entered the apartment and handed Miss Jackson $200 (Tr. 40-41). She handed two small packages of narcotics to Lewis, who then left the apartment (Tr. 12-14, 22-23, 40-41; see Tr. 103-105, 126-129, 139, 142-143, 161-163, 174, 188-189). Laboratory analysis for latent fingerprints revealed Ramsey's thumbprints on the envelopes which contained the narcotics (Tr. 239-240, 241, 245).

On April 23, 1959, Lewis telephoned Ramsey at his apartment and inquired whether "it would be possible to buy narcotics on a larger scale than he had in the past" (Tr. 45-46, 207). Later that day,

Lewis met Ramsey in the latter's apartment. Lewis ordered "some stuff as a favor" (Tr. 45-46). Ramsey said that "he was out" of narcotics, but that if Lewis brought him $1,000 and some "transportation money", he would get him some "pure heroin" (Tr. 46-47; see Tr. 233). Lewis did not bring the money to Ramsey.

2. At the trial, Miss Jackson testified in her own behalf. She testified that, from the early part of 1958 to the early part of 1959, she spent at least half of her time in Ramsey's apartment (Tr. 304, 320-321, 333-335; see Tr. 272). She said that, for varying periods between 1951 and 1958, she was using narcotics and that, in the fall of 1958, Ramsey discovered that fact (Tr. 283-285, 288-291, 294-296, 298, 304, 315, 316, 324, 330, 337-343, 353-355; see Tr. 263-269). She said that she did not sell narcotics to Lewis or accept money from him for narcotics transactions at any time, but that, on the contrary, Lewis was her "main source" of supply for narcotics during this period (Tr. 297-298, 301-308, 316-317, 336-337, 351-353).

In its instructions to the jury, the court charged that it had dismissed count 1, the conspiracy count (Vol. I, 26). The court then charged (Vol. I, 26-27):

> In count * * * Four * * *, it is charged that on * * * February 12th, 1959, * * * in this district these two defendants did wilfully and unlawfully and knowingly sell, barter, exchange or give away and did aid and assist in the selling, bartering, exchanging or giving away to a special employee of the United States Bureau

> of Narcotics, a quantity of narcotic drugs, to wit, approximately 9 grams of heroin, which said heroin was sold * * * or given away not pursuant to a written order issued in blank for that purpose by the Secretary of the United States Treasury * * *.
>
> [Count 5 charges] that on * * * February 12th * * * 1959, these defendants * * * unlawfully received, concealed and had in their possession, and aided and assisted in the receipt, concealment and possession, after being imported and brought into the United States, a quantity of narcotic drugs, to wit, approximately 9 grams of heroin, well knowing the aforesaid heroin to have been imported * * * into the United States, in violation of [law] * * *.

The court further charged the jury that they were the "exclusive judges" of the facts of the case and the credibility of the witnesses, that the indictment was not to be considered as evidence, and that the guilt or innocence of the defendants "on each separate count of the indictment * * * is a separate issue to be tried" by them (Vol. I, 25, 27, 29-32). Petitioners did not object to the charge or seek to have anything added thereto (see Vol. I, 33, 35).

ARGUMENT

1. There is no merit in petitioner Ramsey's contention (Pet. 11-12) that the evidence is insufficient to support his conviction in that the only relevant evidence bearing on his guilt was that his fingerprint appeared on the envelope which contained the narcotics delivered to Lewis on February 12, 1959,

and that the government did not offer any proof as to when the print was placed upon the container. The fingerprint evidence does not stand alone. Its weight had to be judged by the jury in relation to other evidence that Lewis had been dealing with Ramsey in narcotics and that Lewis received the narcotics from Miss Jackson in Ramsey's apartment pursuant to Ramsey's general instructions to follow the usual procedure of coming to the apartment. Under this evidence, the jury could properly find that Ramsey assisted the sale and possessed and concealed narcotics. Fingerprint evidence of this sort is sufficient to warrant an inference of possession of narcotics, adequate to support a conviction under 21 U.S.C. 174. *Stoppelli* v. *United States*, 183 F. 2d 391, 393 (C.A. 9), certiorari denied, 340 U.S. 864; *United States* v. *Pisano*, 193 F. 2d 361, 364-365 (C.A. 7). See *United States* v. *Chiarelli*, 192 F. 2d 528, 531 (C.A. 7), certiorari denied, 342 U.S. 913.

2. Petitioner Jackson contends (Pet. 6-11) that the trial court, in its instructions to the jury, did not sufficiently set forth the "essential questions of law in relation to the offense charged and its elements." Specifically, she argues that the court did not charge the jury on the relationship of the aider and abettor statute, 18 U.S.C. 2, to the substantive offenses of sale and possession in counts 4 and 5.

The jury was, however, sufficiently apprised of the nature and elements of the offenses and was adequately instructed on aiding and abetting. As to the sale count (count 4), the jury was instructed

that the petitioners were charged with having sold or exchanged, on February 12, 1959, a quantity of heroin not in accordance with the special order form of the Secretary of the Treasury, and that they "did aid and assist" in such a sale or exchange of heroin. As to the possession count (count 5), the jury was instructed that the petitioners were charged with having received, concealed, and possessed, on February 12, 1959, a quantity of heroin which they knew had been unlawfully imported into the United States, and that they "aided and assisted in the receipt, concealment and possession" of that heroin. The fact that the court did not read to the jury the statutes allegedly violated or the indictment is immaterial. Since the case was relatively simple, both from the standpoint of the evidence adduced by the government and from the standpoint of the defense proffered by Miss Jackson, it was sufficient for the court to charge the jury on the essential elements of the offenses without unnecessary elaboration, especially where no objections to the instructions or requests for amplification were made by the petitioners at any time. See *United States* v. *Capitol Meats*, 166 F. 2d 537, 539 (C.A. 2), certiorari denied, 334

Miss Jackson denied that she sold narcotics to Lewis or received money from him for narcotics transactions at any time, but that, on the contrary, Lewis supplied her with narcotics during the periods in question (Tr. 297-298, 301-308, 316-317, 336-337, 351-353). Ramsey did not testify in his own behalf. So far as appears from the record, his defense was the negative one that the government did not prove its case against him beyond a reasonable doubt.

U.S. 812; *Beale* v. *United States*, 263 F. 2d 215, 217 (C.A. 5); *Giardano* v. *United States*, 251 F. 2d 109, 117 (C.A. 8), certiorari denied, 356 U.S. 973.

CONCLUSION

For the reasons set forth, we respectfully submit that the petition for a writ of certiorari should be denied.

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